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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Plaintiff Image Ten, Inc.
Correspondence Address	FARAH P BHATTI BUCHALTER NEMER 18400 VON KARMAN AVE STE 800 IRVINE, CA 92612 UNITED STATES Email: mmeeeks@buchalter.com, fbhatti@buchalter.com, trademark@buchalter.com
Submission	Opposition/Response to Motion
Filer's Name	Farah P. Bhatti
Filer's email	trademark@buchalter.com, fbhatti@buchalter.com, mmeeeks@buchalter.com
Signature	/fbhatti/
Date	12/22/2017
Attachments	NOTLD - Response to Motion to Compel.pdf(2036378 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc., Opposer; v. Rusty Ralph Lemorande, Applicant	Opposition No. 91233690 Serial No.: 87/090468 Mark: NIGHT OF THE LIVING DEAD IMAGE TEN, INC.'S OPPOSITION TO MOTION TO COMPEL DISCOVERY (ADMISSIONS)
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Opposer, Image Ten, Inc., (“Opposer”) hereby opposes Rusty Ralph Lemorande’s (“Applicant”) Motion to Compel as follows:

I. OPPOSER PROPERLY SERVED ITS RESPONSES

While the TTAB has noted that a Motion to Compel is not available to compel a party to respond to requests for admission under TBMP 523.01 (June 2017), the TTAB, in its order of December 14, 2017 has found that Opposer did not timely provide its answers to the Requests for Admission and therefore, the requests stand admitted under Fed. R. Civ. P. 36(a)(3). As set forth below, Opposer did timely provide its responses to Applicant and therefore, not all requests should “stand admitted.”

Applicant served his First Set of Requests for Admissions on Opposer via First Class Mail, Postage Prepaid. See attached Declaration of Farah P. Bhatti (“Bhatti Decl.”), Ex. A. Applicant did not send the requests to Opposer via email, but used only First Class Mail. *Id.* at ¶2. Moreover, Applicant did not include the date of service in the Certificate of Service. *Id.* at ¶2. Per the postage stamp on Applicant’s paperwork, it appears the Requests for Admission were mailed on September 12, 2017 and were received by Opposer on September 14, 2017. *Id.* at ¶2.

Given that there was no date of service provided in Applicant's Requests for Admission, Opposer docketed all deadlines using the postmark. In this regard, Opposer docketed October 12, 2017 as the deadline by which responses were to be provided to Applicant.

Opposer served its responses to Applicant on October 11, 2017, one day before the deadline. Opposer included a Certificate of Service with its responses stating that it was serving the responses via First Class mail, postage prepaid (the same manner in which Applicant forwarded the Requests for Admission to Opposer), and included the October 11, 2017 date in the same. Bhatti Decl. at ¶3, Ex. B. Therefore, the Responses to the Requests for Admission were timely filed.

Given that the Responses were timely filed, Opposer's answers as provided are sufficient and all requests should not be deemed admitted. Per Fed. R. Civ. P. 36(a)(4), Opposer correctly included specific denials regarding why it could not admit or deny certain Requests, and Opposer fairly responded to the substance of such requests. Moreover, Opposer, in good faith, qualified some of its answers by partially admitting or denying as appropriate. Moreover, as per the rules, Opposer asserted its lack of knowledge or information as a reason for failing to admit or deny certain Requests as is permissible under the Rules.

II. CONCLUSION

Opposer requests that the TTAB withdraw its order deeming all Requests for Admission admitted given that Opposer timely filed responses to the Request for Admission, properly answered such Requests and included proper objections under the Federal Rules of Civil Procedure where applicable.

Date: December 22, 2017

Respectfully Submitted

BUCHALTER, A Professional Corporation

By: /fbhatti/

Farah P. Bhatti

Michael L. Meeks

Buchalter, a Professional Corporation

18400 Von Karman Ave., Suite 800

Irvine, CA 92612

Phone: (949) 224.6272

Attorneys for Image Ten, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd Day of December, 2017, a true and correct copy of the foregoing **IMAGE TEN, INC.'S OPPOSITION TO MOTION TO COMPEL DISCOVERY (ADMISSIONS)** is being served by first class mail, postage prepaid, and via email, to Rusty Ralph Lemorande at the following address:

Rusty Ralph Lemorande
245 N. Crescent Hts, Blvd. #B
Los Angeles, California 90046
lemorande@gmail.com

/fbhatti/
Attorney for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc., Opposer; v. Rusty Ralph Lemorande, Applicant	Opposition No. 91233690 Serial No.: 87/090468 Mark: NIGHT OF THE LIVING DEAD IMAGE TEN, INC.'S OPPOSITION TO MOTION TO COMPEL DISCOVERY (ADMISSIONS)
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**DECLARATION OF FARAH P. BHATTI IN SUPPORT OF
OPPOSER'S MOTION TO COMPEL**

I, Farah P. Bhatti, declare:

1. I am an attorney duly licensed to practice in the State of California and am an attorney with the Buchalter law firm, a Professional Corporation, attorneys of record for Opposer Image Ten, Inc. ("Image Ten" or "Opposer"). I am one of the attorneys primarily responsible for handling Image Ten's action against Applicant Rusty Ralph Lemorande ("Applicant"). The facts set forth herein are within my own personal knowledge and if sworn as a witness, I could and would testify competently to the truth thereof.
2. On September 14, 2017, I received from Applicant his First Set of Requests for Admissions via First Class Mail, Postage Prepaid. The Certificate of Service did not include a date. However, the postmark of the envelope in which the First Set of Requests for Admissions was mailed included a postmark of September 12, 2017. A true and correct copy of the First Set of Requests for Admissions and the envelope in which they were mailed are attached hereto as **Exhibit A**.

3. Opposer's responses to the First Set of Requests for Admissions were sent to Applicant via First Class Mail, Postage Prepaid on October 11, 2017. Applicant included a Certificate of Service in the document which included the October 11, 2017 date. A true and correct copy of Opposer's Response is attached hereto as **Exhibit B.**

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct, and this Declaration was executed on December 22, 2017 at Irvine, California.



Farah P. Bhatti

EXHIBIT A

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IMAGE TEN, INC.

Opposer

v.

RUSTY LEMORANDE

Applicant

Opposition No. 91233690

**RUSTY LEMORANDE'S FIRST SET OF
REQUEST FOR ADMISSIONS**

PROPOUNDING PARTY: Rusty Lemorande ("Rusty")
RESPONDING PARTY: Image Ten, Inc. ("Six Continents")
REQUEST SET NO.: One

Pursuant to FRCP 33, Rusty requests that Image 10 answer each of the following requests for admission, under oath and in writing within thirty (30) days of service in accordance with the Rule, the definitions, and the instructions contained here.

DEFINITIONS.

1. "Action" shall mean any law suit, arbitration, opposition proceeding, cancellation proceeding, or other legal action before a court, tribunal or regulatory agency with the power to grant relief.
2. "Mark" shall mean the phrase "NIGHT OF THE LIVING DEAD" or variations on such phrase for use with Motion Picture creation, production, distribution or licensing.
3. "Motion Picture" shall mean a movie, film, made for television movie, or other commercial moving picture medium.
4. "Rusty" shall mean Rusty Lemorande an individual and resident of California.
5. "Document" is used in its customary broad sense to include, by way of illustration only and not by way of limitation, all written or graphic matter of every kind and description, whether printed or reproduced by any process, or written and/or produced by hand, whether final or draft, original or reproduction, whether in actual or constructive possession, custody, or control of the party, including: letters, correspondence, memoranda of telephone or personal

1 conversations, emails, microfilm, microfiches, telegrams, books, magazines, newspapers,
2 advertisements, periodicals, bulletins, circulars, brochures, pamphlets, statements, notices,
3 advertising layouts, trade letters, press releases, reports, rules, regulations, directives, teletype or
4 telefax messages, minutes or records of meetings, interoffice communications, financial
5 statements, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, working
6 papers, desk calendars, appointment books, logs, diaries, routing slips, time sheets, logs, movies,
7 tapes (or visual or audio reproductions), drawings, blueprints, sketches, plans, graphs, charts,
8 photographs, shipping papers, purchase orders, phonograph records, data processing paper
9 results, data printouts and computations (both in hard-copy form and stored in memory
10 components) transcripts of oral statements or testimony.

11 6. "Identify" (a) when used with respect to a person means to set forth the name,
12 business position, business address and telephone number, and residential address and telephone
13 number of such person; (b) when used with respect to a Gaming License, means to set forth the
14 jurisdiction where the license was granted, the government or regulatory agency that issued the
15 license, the category or type of license, and current status of license; (c) when used with respect
16 to a Gaming Application, means to set forth the jurisdiction where the application was submitted,
17 the date the application was submitted, the category or type of license applied for, and the current
18 status of application; (d) when used with respect to a Hotel, means to set forth the complete name
19 of the hotel, its physical address, telephone number and website address, and; (e) when used in
20 any other context shall be construed according to its common meaning to require the disclosure
21 of Your knowledge or information in Your possession that is necessary to establish the identity
22 of the subject matter to which the interrogatory pertains.

23 7. "Oppositions" shall mean any forms of objection or opposition to a Third Party's
24 use of a particular trademark, service mark, tradename or fictitious firm name, including but not
25 limited to any cease and desist letter, a complaint filed in any court having competent jurisdiction
26 over the relevant subject matter, any letter of protest submitted to the USPTO, any request for an
27 extension of the time to oppose a Third Party's mark, or any opposition proceeding commenced

1 with the TTAB.

2 8. "Person/Entity" shall mean any natural person, firm, partnership, joint venture,
3 sole proprietorship, association, contractor, consultant, expert, institution, corporation,
4 unincorporated organization, trust, business entity, any other legal entity, or other entity of any
5 description.

6 9. "Third Party(ies)" shall mean all Persons other than Rusty and Image 10.

7 10. "TTAB" shall mean the Trademark Trial and Appeal Board of the USPTO

8 11. "USPTO" shall mean the United States Patent and Trademark Office.

9 12. "You" and "Your" shall refer to the named Opposer in this action, Image Ten,
10 Inc. The terms "You" or "Your" shall also refer to Your agents, Your employees, Your
11 representative, Your insurance companies, their agents, their employees, Your attorneys, Your
12 accountants, Your investigators, or any Person/Entity(s) (as defined above) acting on Your
13 behalf or at Your request.

14 INSTRUCTIONS

15 1. Your answer to each Request for Admission shall specifically admit or deny the
16 matter set forth in detail or the reasons why You cannot admit or deny the matter. If You do not
17 specifically deny the Requests within 30 days after service thereof, those Requests will be
18 deemed admitted. If You can only admit a portion of the Request, it is requested that You
19 specify which portion is admitted and which is denied. Your responses shall be signed by You
20 or Your attorney.

21 2. You may not give lack of information or knowledge as a reason for failure to
22 admit unless You state that You have made reasonable inquiry and that the information You
23 know or can readily obtain is insufficient to allow You to admit or deny.

24 3. If Your answer is based upon information and belief, and not actual knowledge,
25 You shall so state and specifically describe or identify the exact source(s) of such information
26 and belief.

27 REQUESTS FOR ADMISSION

1 **Request for Admission No. 1:** Admit that the Image 10 does not own the exclusive
2 rights to any motion picture entitled "NIGHT OF THE LIVING DEAD".

3 **Request for Admission No. 2:** Admit that the Image 10 does not own the exclusive
4 rights to any television shows entitled "NIGHT OF THE LIVING DEAD".

5 **Request for Admission No. 3:** Admit that the Image 10 does not own the exclusive
6 rights to any commercial video entitled "NIGHT OF THE LIVING DEAD".

7 **Request for Admission No. 4:** Admit that the Image 10 does not own the exclusive
8 rights to any audio program "NIGHT OF THE LIVING DEAD".

9 **Request for Admission No. 5:** Admit that the Image 10 does not own the exclusive
10 rights to any video program entitled "NIGHT OF THE LIVING DEAD".

11 **Request for Admission No. 6:** Admit that the Image 10 has not produced a motion
12 picture in more than 10 years.

13 **Request for Admission No. 7:** Admit that the Image 10 has not produced a motion
14 picture in more than 20 years.

15 **Request for Admission No. 8:** Admit that the Image 10 has not produced a motion
16 picture in more than 40 years.

17 **Request for Admission No. 9:** Admit that the Image 10 has not produced a motion
18 picture in more than 45 years.

19 **Request for Admission No. 10:** Admit that Image 10 has not sought Federal
20 Trademark registration, since the film's creation in 1968, prior to 2017.

21 **Request for Admission No. 11:** Admit that Image 10 did not authorize or license
22 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in
23 2014 and directed by Chad Zuver.

24 **Request for Admission No. 12:** Admit that Image 10 did not authorize or license
25 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in
26 2013 and directed by Samuel Victor.

27 **Request for Admission No. 13:** Admit that Image 10 did not authorize or license

1 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled CHILDREN
2 OF THE LIVING DEAD, directed by Tor Ramsey in 2001.

3 **Request for Admission No. 14:** Admit that Image 10 did not authorize or license
4 use of the title, ANOTHER NIGHT OF THE LIVING DEAD, for the motion picture so entitled,
5 produced in 2011 and directed by Alan Smithee.

6 **Request for Admission No. 15:** Admit that Image 10 did not authorize or license
7 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
8 THE LIVING DEAD: GENESIS, directed by Matt Cloude in 2017.

9 **Request for Admission No. 16:** Admit that Image 10 did not authorize or license
10 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
11 THE LIVING DEAD: Rebirth, directed by Roger Conners in 2017.

12 **Request for Admission No. 17:** Admit that Image 10 did not authorize or license
13 use of the title, HOUSE OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
14 THE LIVING DEAD 3D directed by Ray Austin in 1974.

15 **Request for Admission No. 18:** Admit that Image 10 did not authorize or license
16 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OF THE
17 LIVING DEAD directed by Albert Cochran in 2008.

18 **Request for Admission No. 19:** Admit that Image 10 did not authorize or license
19 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
20 THE LIVING DEAD: REANIMATED, directed by Mike Schneider in 2009.

21 **Request for Admission No. 20:** Admit that Image 10 did not authorize or license
22 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
23 THE LIVING DEAD: REBOOT directed by Lewis Guthrie in 2013.

24 **Request for Admission No. 21:** Admit that Image 10 did not authorize or license
25 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
26 THE LIVING DEAD: RESURRECTION directed by James Plumb in 2012.

27 **Request for Admission No. 22:** Admit that Image 10 did not authorize or license

1 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OPENING
2 NIGHT OF THE LIVING DEAD, directed by Joshua Dickinson in 2014.

3 **Request for Admission No. 23:** Admit that Image 10 did not authorize or license
4 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
5 THE LIVING DEAD: DARKEST DAWN, directed by Zebediah De Soto and Krisztian Majdik
6 in 2015.

7 **Request for Admission No. 24:** Admit that Image 10 did not authorize or license
8 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NERD OF THE
9 LIVING DEAD directed by Stu Dodge in 2011.

10 **Request for Admission No. 25:** Admit that Image 10 did not authorize or license
11 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled ONE FOR THE
12 FIRE: THE LEGACY OF NIGHT OF THE LIVING DEAD, directed by Robert Lucas in 2008.

13 **Request for Admission No. 26:** Admit that Image 10 did not authorize or license
14 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled SEXY
15 NIGHTS OF THE LIVING DEAD, directed by Joe D'Amatz in 1980.

16 **Request for Admission No. 27:** Admit that Image 10 did not authorize or license
17 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
18 THE LIVING DEAD 3D: RE-ANIMATION, directed by Jeff Broadstreet in 2012.

19 **Request for Admission No. 28:** Admit that Image 10 did not authorize or license
20 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF
21 THE LIVING DEAD, directed by Brian Yuzna in 1993.

22 **Request for Admission No. 29:** Admit that Image 10 did not authorize or license
23 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF
24 THE LIVING DEAD II, directed by Ken Wiederhorn in 1988.

25 **Request for Admission No. 30:** Admit that Image 10 did not authorize or license
26 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF
27 THE LIVING DEAD, directed by Brian Yuzna in 1993.

1 **Request for Admission No. 31:** Admit that Image 10 did not authorize or license
2 use of the title, NIGHT OF THE LIVING DEAD: RAVE TO THE GRAVE, for the motion
3 picture entitled RETURN OF THE LIVING DEAD, directed by Ellory Elkayem in 2005.

4 **Request for Admission No. 32:** Admit that Image 10 did not authorize or license
5 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF
6 THE LIVING DEAD: NECROPOLIS, directed by Ellory Elkayem in 2005.

7 **Request for Admission No. 33:** Admit that Image 10 did not authorize or license
8 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled PARIS
9 BY NIGHT OF THE LIVING DEAD, directed by Gregory Morin in 2009.

10 **Request for Admission No. 34:** Admit that Image 10 did not authorize or license
11 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled
12 OPENING NIGHT OF THE LIVING DEAD, directed by Jonathan McDevitt in 2010.

13 **Request for Admission No. 35:** Admit that Image 10 did not authorize or license
14 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled
15 OPENING NIGHT OF THE LIVING DEAD, directed by Shalena Oxley in 2008.

16 **Request for Admission No. 36:** Admit that Image 10 did not authorize or license
17 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT
18 OF THE LIVING DEAD, directed by Rich P. Matthews in 2004.

19 **Request for Admission No. 37:** Admit that Image 10 did not authorize or license
20 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled
21 STRANGE NIGHT OF THE LIVING DEAD, directed by Roman Soni in 2014.

22 **Request for Admission No. 38:** Admit that Image 10 did not authorize or license
23 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT
24 OF THE LIVING DEAD MEXICANS, directed by Nicholas Humphries in 2008.

25 **Request for Admission No. 39:** Admit that Image 10 did not authorize or license
26 use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT
27 OF THE LIVING DEAD PHONE, produced in 2015.

Request for Admission No. 40: Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled MISLEAD: NIGHT OF THE LIVING DEAD, produced in 2011.

Request for Admission No. 41: Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE SO LIVING DEAD GUY, directed by Michael Kesler in 2002.

Request for Admission No. 42: Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Anna Humphries in 2012.

Request for Admission No. 43: Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Steve Look in 2011.

Request for Admission No. 44: Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for any of the following T.V. Episodes:

Night Of The Living Dead	1991	An Actor's Life For Me
Night Of The Living Dead	2007	Crossing Jordan
Night Court Of The Living Dead	1988	Night Court
Night Of The Living Dead Monrovia	2012	Horror Kung-Fu Theatre
Night Of The Living Dead KHIZ	2001	Horror Kung-Fu Theatre
Night Of The Living Dead Dead Bigfoots	1999	Horror Kung-Fu Theatre
Night Of The Living Dead Leprechauns	2004	Horror Kung-Fu Theatre
Night Of The Living Dead Elvises	1991	Horror Kung-Fu Theatre
Dead Of The Living Night	2001	Horror Kung-Fu Theatre
Night Of The Living Dead: Just A Girl	2014	Longbox of the Damned
Night Of The Living Dead Beverly Hills	2002	Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1	2016	Angry Internet Personality
Night Of The Living Dead: Part 1	2012	Survival of the Dumbest
Night Of The Living Dead Reanimated (2009)	2010	The Schlocky Horror Picture Show
Night Of The Living Dead Boyle Heights	2009	Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx	2012	Survival of the Dumbest
Night Of The Living Dead Beverly Hills	2002	Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1	2016	Angry Internet Personality
Night Of The Living Dead: Part 1	2012	Survival of the Dumbest
Night Of The Living Dead Elvis's KHIZ	2003	Horror Kung-Fu Theatre

Night Of The Living Dead: Part Duxx	2012	Survival of the Dumbest
Night Of The Living Dead: Part 2	2016	Angry Internet Personality
Night Of The Living Dead Elvis's Diamond Bar	1995	Horror Kung-Fu Theatre
Night Of The Living Dead East Los Angeles	2007	Horror Kung-Fu Theatre
A Night for the Living, a Mourning for the Dead	2012	Blade

Dated this 28th day of August, 2017

By: /s/ Rusty Ralph Lemorande
 245 N. Crescent Hts. Blvd #B,
 LOS ANGELES CALIFORNIA 90046

Applicant

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Certificate of Service

A copy of Rusty Lemorande's First Set of Requests for Admissions in Opposition No. 91233690 was served by first class mail, postage prepaid, upon Farah P. Bhatti, Buchalter Professional Corporation, 18400 Von Karman Avenue, Suite 800, Irvine, CA 92612-0514.

/s/ Rusty Ralph Lemorande
Rusty Ralph Lemorande

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Farah Bhatti, Esq
Buchalter
A Professional Corporation ☐
18400 Von Karman Avenue,
Suite 800
Irvine, CA 92612-0514

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EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S RESPONSE TO APPLICANT RUSTY RALPH LEMORANDE'S FIRST SET OF REQUEST FOR ADMISSIONS
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PROPOUNDING PARTY: APPLICANT RUSTY RALPH LEMORANDE
RESPONDING PARTY: OPPOSER IMAGE TEN, INC.
SET NO.: ONE (1)

OPPOSER'S RESPONSE TO APPLICANT'S INTERROGATORIES (SET 1)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120 of the Trademark Rules of Practice, Opposer Image Ten, Inc. ("Opposer") hereby responds to the First Set of Admissions propounded by Rusty Ralph Lemorande ("Lemorande"), as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

1. Opposer states that discovery is ongoing and will continue as long as permitted and that Opposer has not yet completed its investigation in this matter. Opposer specifically reserves its right to introduce any evidence from any source and/or testimony from any witness in this matter.

2. Opposer states that its responses are based on its present knowledge, information or belief. Opposer also states that they are responding to the requests as they interpret and understand each request. Further discovery and investigation may reveal information not presently known to Opposer upon which Opposer may rely at the time of trial. Opposer reserves its right, without assuming any obligation not required by law, to amend or supplement its responses to the requests as necessary.

3. Opposer states that the information and/or documents provided in its responses to the interrogatories do not constitute an admission that such information is relevant to the pending litigation. Opposer specifically reserves all objections to the relevancy or admissibility at trial, or in connection with any motion, hearing or other proceeding, of any information provided.

4. Opposer states that nothing contained in these responses should be construed as an admission relative to the existence or non-existence of any fact and no response is to be considered an admission about the relevance or admissibility of any information contained herein.

5. Opposer hereby objects to each and every request as being vague and ambiguous.

6. Opposer hereby objects to each and every request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. No response contained herein will include such privileged information.

7. Opposer objects to each and every request as seeking information that is not relevant to the proceeding. Opposer further objects that Applicant has failed to show a basis for seeking any of the information including any showing that such admission is likely to lead to the discovery of admissible evidence.

8. Opposer objects to each and every request as being burdensome and oppressive and to the extent the request seeks the summary of information, then Applicant is in the same position as Opposer to create any such summary and if Opposer is required to provide such information, Lemorande should be required to prepare any such summaries from the documents produced.

9. Opposer expressly incorporates this Preliminary Statement into each of the following responses.

RESPONSES

REQUEST FOR ADMISSION NO. 1:

Admit that the Image 10 does not own the exclusive rights to any motion picture entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Deny

REQUEST FOR ADMISSION NO. 2:

Admit that the Image 10 does not own the exclusive rights to any television shows entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Deny

REQUEST FOR ADMISSION NO. 3:

Admit that the Image 10 does not own the exclusive rights to any commercial video entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Deny

REQUEST FOR ADMISSION NO. 4:

Admit that the Image 10 does not own the exclusive rights to any audio program "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Deny

REQUEST FOR ADMISSION NO. 5:

Admit that the Image 10 does not own the exclusive rights to any video program entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Deny

REQUEST FOR ADMISSION NO. 6:

Admit that the Image 10 has not produced a motion picture in more than 10 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Deny

REQUEST FOR ADMISSION NO. 7:

Admit that the Image 10 has not produced a motion picture in more than 20 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Deny

REQUEST FOR ADMISSION NO. 8:

Admit that the Image 10 has not produced a motion picture in more than 40 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Deny

REQUEST FOR ADMISSION NO. 9:

Admit that the Image 10 has not produced a motion picture in more than 45 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Deny

REQUEST FOR ADMISSION NO. 10:

Admit that Image 10 has not sought Federal Trademark registration, since the film's creation in 1968, prior to 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Deny

REQUEST FOR ADMISSION NO. 11:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2014 and directed by Chad Zuver.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 12:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2013 and directed by Samuel Victor.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 13:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled CHILDREN OF THE LIVING DEAD, directed by Tor Ramsey in 2001.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 14:

Admit that Image 10 did not authorize or license use of the title, ANOTHER NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2011 and directed by Alan Smithee.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 15:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: GENESIS, directed by Matt Cloude in 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 16:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: Rebirth, directed by Roger Connors in 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 17:

Admit that Image 10 did not authorize or license use of the title, HOUSE OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD 3D directed by Ray Austin in 1974.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 18:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OF THE LIVING DEAD directed by Albert Cochran in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 19:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: REANIMATED, directed by Mike Schneider in 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 20:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: REBOOT directed by Lewis Guthrie in 2013.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 21:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: RESURRECTION directed by James Plumb in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 22:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OPENING NIGHT OF THE LIVING DEAD, directed by Joshua Dickinson in 2014.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 23:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: DARKEST DAWN, directed by Zebediah De Soto and Krisztian Majdik in 2015.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 24:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NERD OF THE LIVING DEAD directed by Stu Dodge in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 25:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled ONE FOR THE FIRE: THE LEGACY OF NIGHT OF THE LIVING DEAD, directed by Robert Lucas in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Deny

REQUEST FOR ADMISSION NO. 26:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled SEXY NIGHTS OF THE LIVING DEAD, directed by Joe D'Amatz in 1980.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 27:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD 3D: RE-ANIMATION, directed by Jeff Broadstreet in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 28:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Brian Yuzna in 1993.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 29:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD II, directed by Ken Wiederhorn in 1988.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 30:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Brian Yuzna in 1993.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 31:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD: RAVE TO THE GRAVE, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Ellory Elkayem in 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 32:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: NECROPOLIS, directed by Ellory Elkayem in 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 33:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled PARIS BY NIGHT OF THE LIVING DEAD, directed by Gregory Morin in 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 34:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled OPENING NIGHT OF THE LIVING DEAD, directed by Jonathan McDevitt in 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 35:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled OPENING NIGHT OF THE LIVING DEAD, directed by Shalena Oxley in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 36:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD, directed by Rich P. Matthews in 2004.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 37:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled STRANGE NIGHT OF THE LIVING DEAD, directed by Roman Soni in 2014.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 38:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD MEXICANS, directed by Nicholas Humphries in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 39:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD PHONE, produced in 2015.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 40:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled MISLEAD: NIGHT OF THE LIVING DEAD, produced in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 41:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE SO LIVING DEAD GUY, directed by Michael Kesler in 2002.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 42:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Anna Humphries in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 43:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Steve Look in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 44:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for any of the following T.V. Episodes:

Night Of The Living Dead 1991 An Actor's Life For Me
Night Of The Living Dead 2007 Crossing Jordan
Night Court Of The Living Dead 1988 Night Court
Night Of The Living Dead Monrovia 2012 Horror Kung-Fu Theatre
Night Of The Living Dead KHIZ 2001 Horror Kung-Fu Theatre
Night Of The Living Dead Dead Bigfoots 1999 Horror Kung-Fu Theatre
Night Of The Living Dead Leprechauns 2004 Horror Kung-Fu Theatre
Night Of The Living Dead Elvises 1991 Horror Kung-Fu Theatre
Dead Of The Living Night 2001 Horror Kung-Fu Theatre
Night Of The Living Dead: Just A Girl 2014 Longbox of the Damned
Night Of The Living Dead Beverly Hills 2002 Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1 2016 Angry Internet Personality

Night Of The Living Dead: Part 1 2012 Survival of the Dumbest
Night Of The Living Dead Reanimated (2009) 2010 The Schlocky Horror Picture Show
Night Of The Living Dead Boyle Heights 2009 Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx 2012 Survival of the Dumbest
Night Of The Living Dead Beverly Hills 2002 Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1 2016 Angry Internet Personality
Night Of The Living Dead: Part 1 2012 Survival of the Dumbest
Night Of The Living Dead Elvis's KHIZ 2003 Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx 2012 Survival of the Dumbest
Night Of The Living Dead: Part 2 2016 Angry Internet Personality
Night Of The Living Dead Elvis's Diamond Bar 1995 Horror Kung-Fu Theatre
Night Of The Living Dead East Los Angeles 2007 Horror Kung-Fu Theatre
A Night for the Living, a Mourning for the Dead 2012 Blade

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

Dated: October 11, 2017

Respectfully Submitted,

/fbhatti/

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CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon Applicant on this 11th day of October, 2017, by First Class U.S. Mail, postage prepaid, at the following address:

Rusty Ralph Lemorande
245 N. Crescent Hts, Blvd. #B
Los Angeles, California 90046

/fbhatti/
Attorney for Opposer